EXHIBIT B

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 05-44481 (RDD); Adv. Proc. No. 07-02619 (RDD);
Adv. Proc. No. 07-02242 (RDD); Adv. Proc. No. 07-02256 (RDD);
Adv. Proc. No. 07-02333 (RDD); Adv. Proc. No. 07-02580 (RDD);
Adv. Proc. No. 07-02661 (RDD); Adv. Proc. No. 07-02743 (RDD);
Adv. Proc. No. 07-02768 (RDD); Adv. Proc. No. 07-02769 (RDD);
Adv. Proc. No. 07-02790 (RDD); Adv. Proc. No. 07-02076 (RDD);
Adv. Proc. No. 07-02084 (RDD); Adv. Proc. No. 07-02096 (RDD);
Adv. Proc. No. 07-02125 (RDD); Adv. Proc. No. 07-02177 (RDD);
Adv. Proc. No. 07-02188 (RDD); Adv. Proc. No. 07-02211 (RDD);
Adv. Proc. No. 07-02212 (RDD); Adv. Proc. No. 07-02236 (RDD);
Adv. Proc. No. 07-02250 (RDD); Adv. Proc. No. 07-02262 (RDD);
Adv. Proc. No. 07-02270 (RDD); Adv. Proc. No. 07-02291 (RDD);
Adv. Proc. No. 07-02328 (RDD); Adv. Proc. No. 07-02337 (RDD);
Adv. Proc. No. 07-02348 (RDD); Adv. Proc. No. 07-02432 (RDD);
Adv. Proc. No. 07-02436 (RDD); Adv. Proc. No. 07-02449 (RDD);
Adv. Proc. No. 07-02479 (RDD); Adv. Proc. No. 07-02525 (RDD);
Adv. Proc. No. 07-02534 (RDD); Adv. Proc. No. 07-02539 (RDD);
Adv. Proc. No. 07-02551 (RDD); Adv. Proc. No. 07-02581 (RDD);
Adv. Proc. No. 07-02597 (RDD); Adv. Proc. No. 07-02618 (RDD);
Adv. Proc. No. 07-02623 (RDD); Adv. Proc. No. 07-02659 (RDD);
Adv. Proc. No. 07-02672 (RDD); Adv. Proc. No. 07-02702 (RDD);
Adv. Proc. No. 07-02723 (RDD); Adv. Proc. No. 07-02743 (RDD);

Adv. Proc. No. 07-02744 (RDD); Adv. Proc. No. 07-02750 (RDD);
Adv. Proc. No. 07-02188 (RDD)

- -x

In the Matter of:

DPH HOLDINGS CORP., et al.,

Reorganized Debtors.

- -x

DELPHI CORPORATION, et al.,

Plaintiffs,

-against-

SETECH INC., et al.,

Defendants.

- -x

DELPHI CORPORATION, et al.,

Plaintiffs,

-against-

DUPONT COMPANY, et al.,

Defendants.

- -x

DELPHI CORPORATION, et al.,

Plaintiffs,

-against-

ECO-BAT AMERICA LLC,

Defendant.

- -x

- -x

DELPHI CORPORATION, et al.,

Plaintiffs,

-against-

GLOBE MOTORS INC.,

Defendant.

- -x

DELPHI CORPORATION, et al.,

Plaintiffs,

-against-

PHILIPS SEMICONDUCTOR, et al.,

Defendants.

- -x

DELPHI CORPORATION, et al.,

Plaintiffs,

-against-

SUMMIT POLYMERS INC.,

Defendant.

- -x

DELPHI CORPORATION, et al.,

Plaintiffs,

-against-

M & Q PLASTIC PRODUCTS, et al.,

Defendants.

- -x

- -x
DELPHI CORPORATION, et al.,
Plaintiffs,
-against-
RSR CORPORATION, et al.,
Defendants.
- -x
DELPHI CORPORATION, et al.,
Plaintiffs,
-against-
RSR/ECOBAT,
Defendant.
- -x
DELPHI CORPORATION, et al.,
Plaintiffs,
-against-
TYCO et al.,
Defendants.
- -x
DELPHI CORPORATION, et al.,
Plaintiffs,
-against-
AHAUS TOOL & ENGINEERING INC.,
Defendant.
- -x

- -x

DELPHI CORPORATION, et al.,

Plaintiffs,

-against-

A 1 SPECIALIZED SVC & SUPP., INC.,

Defendant.

- -x

DELPHI CORPORATION, et al.,

Plaintiffs,

-against-

A-1 SPECIALIZED SERVICES,

Defendant.

- -x

DELPHI CORPORATION, et al.,

Plaintiffs,

-against-

ATS AUTOMATION TOOLING SYSTEMS INC., et al.,

Defendants.

- -x

DELPHI CORPORATION, et al.,

Plaintiffs,

-against-

CORNING INC., et al.,

Defendants.

- -x

- -x

DELPHI CORPORATION, et al.,

Plaintiffs,

-against-

CRITECH RESEARCH INC.,

Defendant.

- -x

DELPHI CORPORATION, et al.,

Plaintiffs,

-against-

DOSHI PRETTL INTERNATIONAL, et al.,

Defendants.

- -x

DELPHI CORPORATION, et al.,

Plaintiffs,

-against-

D & R TECHNOLOGY LLC, et al.,

Defendants.

- -x

DELPHI CORPORATION, et al.,

Plaintiffs,

-against-

DSSI, et al.,

Defendants.

- -x

- -x
DELPHI CORPORATION, et al.,
Plaintiffs,
-against-
DANOBAT MACHINE TOOL CO. INC.,
Defendant.
- -x
DELPHI CORPORATION, et al.,
Plaintiffs,
-against-
EDS, et al.,
Defendants.
- -x
DELPHI CORPORATION, et al.,
Plaintiffs,
-against-
BP, et al.,
Defendants.
- -x
DELPHI CORPORATION, et al.,
Plaintiffs,
-against-
CARLISLE, et al.,
Defendants.
- -x

- -x
DELPHI CORPORATION, et al.,
Plaintiffs,
-against-
GKNS INTERMETALS,
Defendant.
- -x
DELPHI CORPORATION, et al.,
Plaintiffs,
-against-
EX-CELL-O MACHINE TOOLS INC.,
Defendant.
- -x
DELPHI CORPORATION, et al.,
Plaintiffs,
-against-
JOHNSON CONTROLS, et al.,
Defendants.
- -x
DELPHI CORPORATION, et al.,
Plaintiffs,
-against-
NILES USA INC., et al.,
Defendants.
- -x

- -x
DELPHI CORPORATION, et al.,
Plaintiffs,
-against-
METHODE ELECTRONICS INC., et al.,
Defendants.
- -x
DELPHI CORPORATION, et al.,
Plaintiffs,
-against-
MICROCHIP,
Defendant.
- -x
DELPHI CORPORATION, et al.,
Plaintiffs,
-against-
HEWLETT PACKARD, et al.,
Defendants.
- -x
DELPHI CORPORATION, et al.,
Plaintiffs,
-against-
OLIN CORP,
Defendant.
- -x

- -x

DELPHI CORPORATION, et al.,

Plaintiffs,

-against-

INTEC GROUP,

Defendant.

- -x

DELPHI CORPORATION, et al.,

Plaintiffs,

-against-

VALEO, et al.,

Defendants.

- -x

DELPHI CORPORATION, et al.,

Plaintiffs,

-against-

VANGUARD DISTRIBUTORS,

Defendant.

- -x

DELPHI CORPORATION, et al.,

Plaintiffs,

-against-

VICTORY PACKAGING, et al.,

Defendants.

- -x

- -x

DELPHI CORPORATION, et al.,

Plaintiffs,

-against-

WAGNER-SMITH COMPANY,

Defendant.

- -x

DELPHI CORPORATION, et al.,

Plaintiffs,

-against-

WELLS FARGO BUSINESS, et al.,

Defendants.

- -x

DELPHI CORPORATION, et al.,

Plaintiffs,

-against-

SELECT TOOL & DIE CORP.,

Defendant.

- -x

DELPHI CORPORATION, et al.,

Plaintiffs,

-against-

SHUERT INDUSTRIES INC.,

Defendant.

- -x

- -x
DELPHI CORPORATION, et al.,
Plaintiffs,
-against-
SUMITOMO, et al.,
Defendants.
- -x
DELPHI CORPORATION, et al.,
Plaintiffs,
-against-
TECH CENTRAL,
Defendant.
- -x
DELPHI CORPORATION, et al.,
Plaintiffs,
-against-
PRUDENTIAL RELOCATION, et al.,
Defendants.
- -x
DELPHI CORPORATION, et al.,
Plaintiffs,
-against-
LDI INCORPORATED,
Defendant.
- -x

- -x
DELPHI CORPORATION, et al.,
Plaintiffs,
-against-
M & Q PLASTIC PRODUCTS, et al.,
Defendants.
- -x
DELPHI CORPORATION, et al.,
Plaintiffs,
-against-
REPUBLIC ENGINEERED PRODUCTS, et al.,
Defendants.
- -x
DELPHI CORPORATION, et al.,
Plaintiffs,
-against-
RIECK GROUP LLC,
Defendant.
- -x
DELPHI CORPORATION, et al.,
Plaintiffs,
-against-
CRITECH RESEARCH INC.,
Defendant.
- -x

U.S. Bankruptcy Court

300 Quarropas Street

White Plains, New York

July 22, 2010

10:20 AM

B E F O R E:

HON. ROBERT D. DRAIN

U.S. BANKRUPTCY JUDGE

this point, but to me the Constitutional issue, you know, the due-process issue here, is not so much the running of time as the issue of whether and how the defendants got notice of the Rule 4 motions. If they didn't get notice, then it's wide open. If they did get notice, I think there's a 60(b) hurdle. But if they didn't get notice, it's wide open and I should look at it as whether, you know, it was appropriate to have entered those orders. And they should have all their -- you know, their right to say they shouldn't have been entered.

MS. SCHWEITZER: Right. Your Honor, I think Your Honor -- as you're raising, there are very difficult questions raised when you look at both sides of this argument. You raised several points and I'd like to take some of them in turn. The first one is just the raising of the 4(m) and the fact the Supreme Court has said that there's no per se due-process violation in terms of changing a statute of limitations. That's said in the context of policy decisions of policymakers making a uniform decision that 'We're going to change the rule. We're going to change the law because BP has now intoxicated the entire Gulf of Mexico and we need to say it's not fair that people have a year to bring those claims.' There's been no grand policy decisions here.

And in fact the debtors didn't need more time to bring the claims. The debtors said 'I'll file these claims in a timely manner.'

THE COURT: But, I mean, a policy could be un-Constitutional too. I mean, Congress may say that we want to, you know -- well --

MS. SCHWEITZER: Right.

THE COURT: -- that 'We decide as a policy matter to legalize slavery. You know, that clearly violate the due-process clause. It's a policy decision, but --

MS. SCHWEITZER: Right.

THE COURT: So I don't --

MS. SCHWEITZER: But --

THE COURT: I mean, I think the point is that the statute of limitations, I don't believe, is the type of interest that's protected by due process.

MS. SCHWEITZER: But I think that there's two different things that happen here to the debtors is that they claim that they satisfied the statute of limitations. They said 'We filed these timely,' right? And 'We met the two and a half year deadline.'

THE COURT: Right.

MS. SCHWEITZER: 'But what we want to do after that point is put these in a drawer, put them under lock and seal and affirmatively not tell people about these claims' in two different ways: in filing these extension motions without particularized notice, and I'll get to that; and the second way is affirmatively sealing not only the complaint, which we now

know contains no confidential information, no commercial reason that you need to sell this complain other than to let someone know it doesn't exist.

THE COURT: Right.

MS. SCHWEITZER: And they not only sealed that, but they actually sealed the docket itself so that any diligent counterparty who regularly searches the federal docket to find out if they've been sued and whether it's because they're selling their company or because they want to take reserves or because they want to do whatever they do in the ordinary course, could not find this docket.

And the debtors' explanation for that is they want to preserve business relationships with folks, folks I assume like HP who has continued to do business with them.

THE COURT: I understand, but to me that all goes to laches. I mean, it just -- it strikes me that tomorrow Congress could say that for debtors-in-possession the two-year period is a six-year period. And there's nothing that you all could do about that.

MS. SCHWEITZER: But the fact --

THE COURT: I mean, you could vote out your congressmen, but that would be it.

MS. SCHWEITZER: Right, and -- fair enough, but I think that the answer there is that if you -- that these arguments definitely do bleed into each other. And whether you

want to say it's per se laches, which you can, again, decide on a motion to dismiss, that there are facts that are common to people, right? That the complaints themselves were hidden from everyone for two and a half years.

Rule 4(m) is an extension of time to serve people, not to not serve people. They asked for permission not to serve people. And what they said in their original motions, which is probably different than how it played out, was, 'We want to preserve business relationships. We want to work with people --

THE COURT: No, I understand that point and it seems to me it may make more sense to move from, sort of, the basic due process argument that you started out with to the point that the order shouldn't have been entered in the first place and can be looked at, you know, on a blank slate for those who didn't get notice of them.

MS. SCHWEITZER: Right. Well, I think that -- so let's take the notice argument, because I know that is another thing you raised and it's a fair point. There are certain defendants in the room such as Mr. Gottfried whose clients were not creditors of the estate at all. They didn't appear; they weren't creditors; they closed their books; they weren't on notice of the motion. I think that's the most extreme version of 'I, A, didn't know there was a claim against me, I didn't even know I had to hire a lawyer to monitor this bankruptcy

case and I certainly was never told of the extension of times' --

THE COURT: Right.

MS. SCHWEITZER: -- 'so I didn't have an opportunity to contest that.' I, quite frankly, think that's the slam dunk, right? Because you look at that and you say --

THE COURT: Well, it's a slam dunk as far as looking at the order as brand new. I don't think it necessarily means that the orders aren't effective as to that person; it just means that that person can raise whatever issue they want as to that order -- as to those orders.

MS. SCHWEITZER: Right. And I would happily go into the arguments as looking as the orders as brand new, but I do want to be respectful of not dupli --

THE COURT: I'm sorry. The arguments of?

MS. SCHWEITZER: Of looking at each of these orders brand new and how they played out --

THE COURT: Okay.

MS. SCHWEITZER: I do want to be respectful of the fact that Mr. Winsten was going to address --

THE COURT: All right.

MS. SCHWEITZER: -- those arguments, so --

THE COURT: Okay.

MS. SCHWEITZER: -- I won't step on that point.

THE COURT: That's fine.

MS. SCHWEITZER: But I do want to address even the idea of people who had, what the debtors would say of notice, of the arguments because they were on a Rule 2002 service list or the like of that.

THE COURT: Right.

MS. SCHWEITZER: What the debtors are saying is that 'We recognize that it's our duty to file and serve complaints. We want to put these complaints under seal. We want all this motion, which is not only an extension motion; this motion says we started out with 11,000 claims and we crossed out a whole bunch of these claims. We abandoned a whole bunch of other claims. We're concerned with protecting debtor relationships and we intend to not sue most of these people under this existing plan or any other plan, modified, that we file in the future. We generally do not want to preserve these claims. But, we're moving quickly. We know that we don't have the time to think this through. Allow us to put this placeholder in the docket now and to go over time and figure out if we want these claims to be pursued.'

And I will point, again, to the foreign defendants, that if you're a foreign defendant as some of the HP and EDS clients were, who didn't even have contracts with the debtor, but if you were and you were diligent enough, these -- that 'I'm curious and I want to look at this motion, even though it didn't pertain to appear to me and they're waiving it against

me', then what the debtor is saying was, 'Well, if you were really curious, you would have called the debtor counsel and asked'. And why one of the 100 or 700 out of 11,000 that are being preserved in the debtors' discretion, 'even though I have continuing business relationships with you, even though I'm a foreign defendant, even though I think I have ordinary course defenses and you say you're not preserving any of those claims at all.'

And this idea -- I understand; I don't mean to make light of receiving notice on the 2002 service list, but this idea that there's not particularized notice, you're not telling the 700 or 177 people, 'This order related to you' is not frivolous. When you look at the time that these motions were entered on the docket, the first motion was docket number 8,905. So if you were getting stuff in the mail along the way as the creditors do in the case, that means -- let's say, half of those are affidavits of service. Let's just cross out half of them. This is probably the 4,500th pleading you've received in the mail at that point. You're paying your attorney, what, 500 dollars an hour to review these pleadings, and let's say they're spending a quarter of an hour reviewing each of these pleadings.

At that point, you've asked your attorney to go looking for ways the debtors could step on your rights, you've spent 563,000 dollars just in monitoring the docket in a case

where the debtors themselves could have just said, the same way they do for claims objections, the same way they do for extensions of time to assume and reject leases, the same way they do for every other motion that faces deadlines, they serve you individualized notice and it says, 'You are one of the small bucket of people who are not the 11,000 that we're abandoning. You're one of the 177 or the 762.'

The burden there was not so great on the debtors that they should -- 'We should be forced to explain why we read the motion, didn't understand it or didn't realize in the face of it that it applied to me or didn't realize that the debtor meant his when they said that, didn't realize that when they said that they were protecting business relationships that wasn't my business relationship with them.'

And what I think is especially --

THE COURT: Well -- I'm sorry; go ahead.

MS. SCHWEITZER: Okay. No, go ahead.

THE COURT: Well, I mean the -- it wasn't buried in a motion, right? The tile of the motion would have showed you that there, you know, if you had a concern about a preference, it would have alerted you to that, wouldn't it?

MS. SCHWEITZER: It would have told you that the debtors -- well, the first -- let's -- I think there's two different portions of the motions, right? There's the two -- first two motions; they're sixty-day extensions, right? And I

don't want to say no harm, no foul, but it was understandable and whether you want to say people looked at that, at that time and said, 'I don't know, you know. Maybe this is all going to go away, whatever. It doesn't seem so important. It's probably not me.' Whatever people did or didn't say or they didn't even read it -- who knows, right?

When you get to the third motion, docket entry, again, 13,361, so this is the seventh, eighth, ninth, hundredth, thousandth pleading you've gotten in the mail and you see this and you say, 'Okay, the debtors are saying of 11,000 people, 762 of them are the ones that I'm preserving actions against, that, again, not today, but I want to work through.'

You would have to tell defendants that your job is to call the debtor, to make the assumption that out of 11,000 claims, you're one of 762 people whose rights are possibly being affected because the debtor might in the future, you know, decided to prosecute that action against you, again, when they're good and ready.

I think at the time that motion was entered, no one necessarily saw that this was going to be another two and a half year process, that the plan was going to change so substantially, that this was going to evolve over time. And certainly, it's just -- it seems inconsistent with the law of when you start with the premise that the law says you must preserve an action, you must file it against a person and you

must serve it on them. And the debtors saying, 'Oh, we have to seal these complaints. These are relationships that we want to preserve.'

The debtors wouldn't have informally or formally notified you the way that they do, quite frankly, in every other case, which is the debtors panic; they get to a week before, there's such --

THE COURT: Well, if it was just filed, people wouldn't have checked either, right, because they -- I mean, you argue that it's not particularized, it's just file on the docket, it's not served on them.

MS. SCHWEITZER: But, that actually --

THE COURT: I'm just not sure how the sealing really fits into that at this point.

MS. SCHWEITZER: I think the way the sealing fits in is whether you want to take it in the context of the plan. I mean the plan would be the most extreme version, but it's the same as the other adversary proceedings. It's as if you said, 'Gee, I want to know if my rights are affected. I want to know if I should really be one of these people who's calling the debtor. I want to know if I should be concerned' --

THE COURT: It would be easier to check the docket --

MS. SCHWEITZER: it'd be --

THE COURT: -- than to call the debtor. Yeah, I agree with that. You could just -- you could use the electronic

docket to see if there was an adversary proceeding filed. I agree with that.

But let me ask. The Supreme Court this year talked about notice for due process purposes in the Espinosa case. And they said that actual notice of the plan was enough, even though it was the plan that improperly dealt with the nondischargeable student loan. That was -- it was enough to take it out of 60(b)(4) and was, you know, was sufficient due process. How is this different from that?

MS. SCHWEITZER: Well, what I think is different is that the concern here is that you're taking a process and taking literal procedures and turning on the head the expectations of all parties involved in that process. What you're saying is I'm going to file a plan on you, right, and I've got my plan disclosure statement in the mail.

The exhibit is missing on retained actions. Thirteen days before the objection deadline, I'm going to file a notice of plan supplement on the docket that lists docket numbers, not actual case names, docket numbers, and if you, when you get served by mail in the thirteen days before the confirmation deadline, go to look up that exhibit, you're going to find a link again to 177 docket numbers out of 11,000 potential claims. You're going to go to those links and you're going to hit a roadblock.

And so in those last ten days, if you really do

consider yourself on notice and you really did want to look into this, you're running against the wall and you're running against the wall to find out that the debtors have, in fact, sued you two and a half years earlier.

Now, I understand there are things in bankruptcy that are sometimes preferable notice, the best possible notice versus minimally adequate notice, but the difference here is the debtors didn't merely say, 'I want to tell -- give people comfort that, look, I filed this against you, I don't really mean it.' Or, 'I don't know if I mean it. Let's all sit tight, let's all join the benefit of the breather and the benefit of working through whether these are meritorious claims and we can all do that together.' The debtors, instead, unilaterally, at every turn, said, 'I'm not going to tell you.' And the due process cases around planned disclosure and the res judicata cases around planned disclosure generally say, 'Well, if the debtor preserves everything, everyone knows they're affected.' Right? Or if was just too burdensome for the debtor that they couldn't really possibly have gone through and sorted out the cases so early on in their proceeding, we're going to give them a little slack.

But here the debtors knew exactly what they were preserving. And they didn't serve that plan exhibit on anyone. They didn't unseal the dockets at that point. They didn't even ask for effective relief to seal the dockets in the context of

the plan or to seal a schedule in the plan that would have listed the peoples' names. What they said was, 'Oh, we already got that relief a year and a half earlier and we're going to get it again after the plan is confirmed because it worked so well. Let's just keep doubling down', all on the principal of 'We're protecting ongoing business relationships.'

And to say to people that you, as the defendant, have to be on the watch and you have to come forward when you think something unjust is happening, really shifts the burden on you. You're saying you don't just have a burden to defend against claims; you have a burden to actively monitor dockets and actively ferret out when the debtors are doing things contrary to your expectations. Not just things that they would ordinarily would be entitled to do, but when they're actually burying claims and putting them to the back of the road, well beyond the initial purpose which was just status quo and nonprejudice. Now, you have to spend the time and money -- at what point is a creditor allowed to tell their attorneys, 'Stop spending money.'?

I mean, doing the same math they had given you, if you look at the third extension that was after the plan, you get over to a million dollars in monitoring the docket, spending fifteen minutes a pleading; whether it's the plan or any other motion, times the number of 13,000 motions. You're talking about over a million dollars -- and you're smiling because the

answer is no one spends a million dollars monitoring these cases --

THE COURT: No, I know, but no one spends fifteen minutes on every pleading, either. You know that that --

MS. SCHWEITZER: Take it in half, take it in a quarter, take it in a eighth; tell me my rates are outrageous at 500 dollars an hour. I'm fine with that, but you're telling the clients, every one of these 11,000 transferees, that they have to spend the time monitoring all 13,000 pleadings to make sure there's no 'Gotcha' in there, to make sure the debtor is not still holding on to a claim against them. Because it's not only the 177 that survived, in the debtors' world --

THE COURT: Well, what --

MS. SCHWEITZER: -- it's all 11,000 people.

THE COURT: -- I guess what's missing here is the ability to know whether any of these movants got actual notice. I mean, I find it hard to believe that none of them was aware of what was going on.

MS. SCHWEITZER: Well, I think there are different levels of "aware of what was going on". I think there's a level of 'I didn't know anything that was going on because I didn't even know that Delphi was in bankruptcy.' Right? I mean, there's that level.

THE COURT: Right.

MS. SCHWEITZER: There's 'I knew that Delphi was in

bankruptcy but I didn't know about the statute of limitations' or 'I did know and I didn't see this motion' or 'I didn't understand this motion'. And then there are people who got the motion in the mail, maybe, maybe not, but even people who got the motion in the mail, did they really know that they were a defendant? And I don't think the debtors have ever suggested that they voluntarily told anyone. And I can certainly say for my clients, it wasn't the typical case where you get the letter in the mail warning you.

THE COURT: But it's the -- for me to dismiss all of these complaints on this theory, it has to apply to that last group, right? Someone that got it in the mail, maybe even put two and two together and said, 'Oh, I may be at risk here. Well, I'll just, you know, I'll let it go by.' Isn't it the case that to dismiss these complaints, I have to -- on these motions, I have to find that?

MS. SCHWEITZER: I think you have to find that the debtors -- and, again, this is where it looks back to the due process issues, is that the debtors' wholesale took a position and created a strategy which whatever good intentions they had when they first asked for it and whatever their intentions were even in the spring of 2008, took you down the path where the wholesale matter -- it's unfair to let these proceedings go forward. And particularly when you see the complaints that are at hand because this isn't over in terms of figuring out how

we've been sued and what the notice is. When you look at the sufficiency of the complaints --

THE COURT: Well, that's a separate issue. I understand that issue. That's a separate issue.

MS. SCHWEITZER: I think it's a separate issue, but I think that -- I mean, first, my answer would be yes. You can take notice of the fact that there's a passage of time, that there's been not only two things, a lack of notice -- a lack of adequate notice, and not only a lack of notice but a concerted effort to hide the complaints, coupled with the fact of the passage of time and the things that have happened over that time, the defendants didn't have an opportunity during this time to use those complaints to their advantage, quite frankly. That the -- whether to get information from the debtors before the business were sold and, quite frankly, taking the debtors' explanation at face value, 'We wanted to preserve business relationships because we didn't want adverse consequences to flow from the knowledge that these complaints existed.'

What did that mean? People could have said, 'I'm doing business with you and I don't want to keep doing business with you.' 'I'm doing business with you but I want these claims settled, as a part of doing business with you.' 'I'm not doing business with you, but I would happily trade away some of these claims for doing business with you.' 'I got a plan in the mail but you know what? Everything is going so

smoothly with you, I'm going to say' --

THE COURT: But, again, isn't that on a case-by-case basis? I mean, I -- as far as I can see, there's one case that concludes that 4(m) relief was improperly granted and that case wasn't on due process grounds. The Ninth Circuit just said, 'You know, we don't really set a standard for when it's improperly granted, but it was improperly granted.' So, I mean, it just seems to me that it's much more of a case-by-case analysis, depending on the, you know, the harm that happened to people.

MS. SCHWEITZER: Right. Well, I guess --

THE COURT: With the exception -- let me stop you.

MS. SCHWEITZER: Okay.

THE COURT: With the exception that under Rule 60(b)(4), if someone really didn't get notice of the extension motions, then it would seem to me they should be able to argue to me as if the motions were being made right now, although I'll hear the debtors on that. But, that seems to be the way to look at it.

MS. SCHWEITZER: Right. Well, Your Honor --

THE COURT: And then, the notice that would trigger the Rule 60(b)(4) analysis would be due process notice and consistent with not only Espinosa, but Mulane and the like. It's true, if -- if the notice was buried or confusing or the like, then I would understand that, too, as a violation of due

Requiring for them to do all those things seems to me to be the minimum of fairness --

THE COURT: Well, look, it's a motion for leave to amend the complaint on unusual circumstances. It's really their risk if I turn them down again, right? So --

MR. WINSTEN: My only point was that it should be Iqbal plus, not Iqbal minus.

THE COURT: Well, I don't know what that means. And, frankly, I think the Supreme Court's been pretty careful not to turn Iqbal into a plus.

MR. WINSTEN: Right.

THE COURT: So --

MR. WINSTEN: But these are our --

THE COURT: But I think that the risk of being turned down on the basis of the complaint still isn't good enough is a serious enough -- the consequences of that are serious enough so I assume that the plaintiffs are going to be pretty careful.

MR. WINSTEN: A suggestion when we get there is that they ought to attach a draft --

THE COURT: Well, you have to do that.

MR. WINSTEN: Yes. So we know --

THE COURT: Yeah, absolutely.

MR. WINSTEN: -- what the form's going to be.

THE COURT: Got to do that.

MR. WINSTEN: Let me move to assumed contracts. This